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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

16 HENRY TUKAY,

17 Plaintiff,

18 v.  
19 **JOINT INITIAL CASE MANAGEMENT  
CONFERENCE STATEMENT AND RULE  
26(F) REPORT**

20 UNITED AIRLINES, INC.,  
DOES 1 TO 20,

21 Defendant.  
Date: February 25, 2015  
Time: 2:00 p.m.  
Location: Courtroom 9, 19th Floor  
Judge: Jon S. Tigar

1           The parties to the above-entitled action jointly submit this Joint Case Management  
 2 Statement and Proposed Order pursuant to the Standing Orders for All Judges of the Northern  
 3 District of California dated, July 1, 2011 and Civil Local Rule 16-9.

4 **I. JURISDICTION AND SERVICE**

5           The parties agree that this Court has diversity jurisdiction over this matter pursuant to  
 6 28 U.S.C. § 1332(a). The amount in controversy exceeds \$75,000, and complete diversity exists because  
 7 the parties are citizens of different states. There are no issues with regard venue and no parties remain  
 8 to be served.

9 **II. FACTS**

10          **A. Plaintiff's Position**

11          Plaintiff is an adult Asian male of Filipino descent. He is fifty-seven years of age.  
 12 Plaintiff was employed as a mechanic at United Airlines, Inc.'s San Francisco maintenance base for  
 13 over twenty-three (23) years, and had a satisfactory work record.

14          Plaintiff is disabled. Plaintiff notified defendant of his disability and requested  
 15 accommodation for his disability. Plaintiff utilized intermittent leave under the FMLA due to  
 16 symptoms of his medical condition, most recently around October 2012.

17          Plaintiff was discharged from employment on March 14, 2013. Defendant stated that  
 18 the reason for his termination was the vandalizing of a co-worker's vehicle in the parking lot.  
 19 Defendant had no reasonable suspicion or probable cause to report plaintiff to the police; and, in  
 20 fact, the San Mateo District Attorney subsequently dismissed all charges against plaintiff. Plaintiff is  
 21 aware that other employees who were of a different race than himself, and who had committed  
 22 similar or worse types of misconduct were not terminated from employment by defendant, whereas  
 23 employees of Filipino descent were terminated.

24          Plaintiff was subject to various forms of workplace harassment, disparate treatment.  
 25 and worked in a hostile work environment ever since the above incident. In one instance noted in  
 26 2012 he endured a derogatory remark from a superior, who said, "Filipinos eat that shit!" in  
 27 reference to roaches that were believed to have infested the military barracks.

1           **B.     Defendant's Position:**

2           Plaintiff is a former mechanic for United Airlines. Plaintiff worked at United's  
 3 Oakland and San Francisco maintenance base. Plaintiff was terminated on or about March 14, 2013  
 4 after he was caught on a security camera vandalizing another employee's vehicle parked on United's  
 5 property. United conducted a thorough and fair hearing with Plaintiff, who was represented by his  
 6 Union, and submitted photographic and video evidence in addition to employee statements regarding  
 7 the vandalism. The hearing officer upheld Plaintiff's discharge, and Plaintiff's Union declined to  
 8 pursue his grievance any further. United denies that Plaintiff was subject to age or disability  
 9 discrimination, retaliation, wrongfully terminated, defamed or any other wrongful conduct and  
 10 denies that Plaintiff suffered damages as a result of any alleged conduct of United. Plaintiff's claims  
 11 are without merit and should be dismissed on a properly supported pretrial motion.

12           **III.    LEGAL ISSUES**

13           Whether Plaintiff can establish that his termination was the result of illegal  
 14 discrimination because of age.

15           Whether Plaintiff can establish that his termination was the result of illegal  
 16 discrimination because of a disability.

17           Whether Plaintiff can establish that his termination was the result of illegal  
 18 discrimination because of race.

19           Whether Plaintiff can establish that he was terminated in retaliation for filing a  
 20 workers' compensation claim.

21           Whether Plaintiff can establish that he was terminated in retaliation for taking leave  
 22 under the Family and Medical Leave Act of 1993.

23           Whether Plaintiff can establish that he was wrongfully terminated in violation of  
 24 public policy.

25           Whether Plaintiff can establish a claim for willful failure to pay wages under  
 26 California Labor Section 201 and 203.

27           Whether Plaintiff can sustain a claim for defamation.

28           Whether Plaintiff was subject to discrimination because of veteran status.

1           Whether Plaintiff suffered damages proximately caused by United.  
 2           Whether Plaintiff is entitled to recover punitive damages.  
 3           Whether Plaintiff has mitigated his alleged damages.  
 4           Whether any recovery is barred by after-acquired evidence.  
 5           The nature and extent of damages suffered by Plaintiff, if any.  
 6           The amount of attorneys' fees any party is entitled to, if any.

7           **IV. MOTIONS**

8           Defendants<sup>1</sup> filed a motion to dismiss on October 3, 2014. Plaintiff filed a motion to  
 9 remand on October 31, 2014. The Court issued an order on December 22, 2014 denying Plaintiff's  
 10 motion to remand, and granted in part and denied in part Defendants' motion to dismiss. The Court  
 11 granted Plaintiff leave to amend the Complaint's dismissed claims. The Court required Plaintiff to  
 12 seek leave from the Court to bring additional claims. Pending before the Court is Plaintiff's motion  
 13 to amend his Complaint to add additional claims. On February 3, 2015, Defendant filed a Statement  
 14 of Non-Opposition to Plaintiff's motion to amend his Complaint to add additional claims.  
 15 Defendant anticipates filing a motion to dismiss Plaintiff's amended Complaint. Defendant  
 16 anticipates filing a motion for summary judgment or other dispositive motion, a motion to bifurcate  
 17 punitive damages, and motions *in limine*.

18           **V. AMENDMENT OF PLEADINGS**

19           **A. Plaintiff**

20           Plaintiff has filed an Amended Complaint which is not opposed by Defendant.

21           **B. Defendant**

22           Defendant has not yet answered. Defendant reserves its right to file amended  
 23 pleadings pursuant to the Federal Rules.

24  
 25  
 26  
 27           <sup>1</sup> Plaintiff's original Complaint alleged claims against United Continental Holdings, Inc. and United Airlines, Inc. The  
 28 Court dismissed Plaintiff's claims against United Continental Holdings, Inc., and Plaintiff has not re-alleged claims  
 against United Continental Holdings, Inc. in his amended Complaint.

1           **VI. EVIDENCE PRESERVATION**

2           The parties have reviewed the Northern District's Guidelines Relating to the  
 3           Discovery of Electronically Stored Information ("ESI Guidelines") and have met and conferred to  
 4           discuss the discovery of electronically stored information ("ESI"). Plaintiff has taken appropriate  
 5           measures to preserve potentially relevant evidence. Defendant has taken reasonable measures to  
 6           preserve relevant evidence that is readily accessible.

7           The parties agree to continue to meet and confer in good faith regarding the scope and  
 8           nature of any requests for electronic discovery.

9           **VII. DISCLOSURES**

10          The parties have stipulated to continue the date of initial disclosures to March 3,  
 11          2015.

12          **VIII. DISCOVERY**

13          The parties have not taken any discovery to date. The parties intend to engage in  
 14          written discovery, including requests for production of documents, interrogatories, and expert  
 15          discovery. The parties also intend to take depositions. At this time, Plaintiff intends to depose one  
 16          or two of United's employees and Defendant intends to depose Plaintiff.

17          The discovery limits set by the Federal Rules of Civil Procedure are acceptable to  
 18          both parties.

19          **IX. CLASS ACTION**

20          This is not a class action.

21          **X. RELATED CASES**

22          The parties are not aware of any related cases currently pending. On November 6,  
 23          2014, in the related case *Tukay v. International Brotherhood of Teamsters Local 856/986*, Case  
 24          Number 3:14-cv-01906-JST, Plaintiff filed a notice of dismissal without prejudice based on which  
 25          the Court ordered the case dismissed without prejudice.

1       **XI. RELIEF**2       **A. Plaintiff's Position**

3              Plaintiff has suffered approximately \$180,000 in lost wages, plus lost benefits; has  
 4              suffered emotional distress, and seeks potential punitive damages.

5       **B. Defendant's Position**

6              Defendant denies that Plaintiff is entitled to the relief sought.

7       **XII. SETTLEMENT AND ADR**

8              The parties have an ADR phone conference on February 23, 2015.

9       **XIII. CONSENT TO A MAGISTRATE JUDGE FOR ALL PURPOSES**

10             The parties declined to the assignment of this case to a Magistrate Judge for all  
 11             purposes.

12       **XIV. OTHER REFERENCES**

13             This case is not suitable for reference to binding arbitration, a special master, or the  
 14             Judicial Panel on Multidistrict Litigation.

15       **XV. NARROWING OF ISSUES**

16             At this early stage, the parties have not been able to determine whether the length of  
 17             trial can be reduced by stipulation, use of summaries, or other means of presenting evidence.

18       **XVI. EXPEDITED SCHEDULE**

19             The parties do not believe this case is suitable for an expedited schedule.

20       **XVII. SCHEDULING**

21             Defendant proposes the following schedule:

- 22             • Non-expert discovery cutoff: August 31, 2015
- 23             • Dispositive Motions filed by September 30, 2015
- 24             • Expert witness disclosure: November 30, 2015
- 25             • Expert Witness discovery cutoff: December 30, 2015
- 26             • Trial: January 2016.

27             Plaintiff proposes the following tentative pre-trial deadlines:

- 28             • Trial before the end of 2015.

1           **XVIII. TRIAL**

2           Defendant requested a jury trial. At this early stage, it is difficult to estimate with any  
 3 degree of accuracy the length of trial. At this time, the parties estimate that trial of this matter will  
 4 take approximately 4-6 court days.

5           **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

6           Defendant has filed a Certificate of Interested Entities as required by the Federal  
 7 Rules of Civil Procedure and the Local Rules of this Court.

8           **XX. PROFESSIONAL CONDUCT**

9           The parties have reviewed the Guidelines of Professional Conduct for the Northern  
 10 District of California.

11          **XXI. OTHER MATTERS**

12          The parties' counsel understands they should have filed a Joint Case Management  
 13 Conference Statement on December 22, 2014 and mistakenly did not do so. The parties' counsel did  
 14 not file a Joint Case Management Statement on December 22, 2014 because they were awaiting the  
 15 Court's ruling on United's motion to dismiss and Plaintiff's motion to remand, both motions which  
 16 the Court had taken under submission. Counsel understand that regardless of the status of the then  
 17 pending motions, absent direction otherwise by the Court, they should have filed their Joint  
 18 Statement on December 22, and apologize for failing to do so.

19          Dated: February 11, 2015

21          \_\_\_\_\_  
 22          /s/ NANCY E. PRITIKIN  
 23          NANCY E. PRITIKIN  
 LITTLER MENDELSON, P.C.  
 Attorneys for Defendant  
 UNITED AIRLINES, INC.

24          Dated: February 11, 2015

25          \_\_\_\_\_  
 26          /s/ ALBERT M. KUN  
 27          ALBERT M. KUN  
 Attorneys for Plaintiff  
 HENRY TUKAY

1                   **SIGNATURE CERTIFICATION**

2                   Pursuant to Section 5-1(i)(3) of the Civil Local Rules, I hereby certify that the content  
3 of this document is acceptable to Plaintiff's counsel, Albert M. Kun, and that I have obtained Mr.  
4 Kun's authorization to affix his electronic signature to this document.

5                   *s/ Nancy E. Pritikin* \_\_\_\_\_

6                   Nancy E. Pritikin  
7                   Attorneys for Defendant  
                  UNITED AIRLINES, INC.

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